CF0000062225

(12)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P.

Cri.Appeal No. 2047 of 1999.

APPELLANT IN JAIL : Vijay Yadav, aged about 40 years
S/o Rohit Lal Yadav,
R/o Janjgir, Chandaniyapara,
at present Talapara, Indira Nagar,
P.S. Civil Lines, Bilaspur. (MP).

V E R S U S

RESPONDENT : State of Madhya Pradesh,
Through Station House Officer,
Police Station, Civil Lines,
Bilaspur. (MP).

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE 1973.

(39)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2647/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO AND & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2647 of 1999

Appellant	:	**Vijay Yadav**
		Vs.
Respondent	:	**State of Madhya Pradesh**

Shri Ranbir Singh learned counsel for the appellant.
Shri G.D. Vaswani, Addl. Public Prosecutor for the respondent/State.

ORAL JUDGMENT
(09.11.2006)

Per L.C. Bhadoo , J

By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellant namely Vijay Yadav has questioned the legality and correctness of the impugned judgment of conviction and order of sentence dated 30.9.1999 passed by 7th Additional Sessions Judge, Bilaspur in Sessions trial No. 44/1999 whereby learned Additional Sessions Judge after holding him guilty for commission of the offence under section 302 of the IPC has sentenced to undergo imprisonment for

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

life and pay fine of Rs. 2000/-, in default of payment of fine to further undergo RI for one month.

2. Case of the prosecution in brief is that in the intervening night of 19/20-9-1997 when accused/appellant and deceased Rampyari Bai were at their residence, some quarrel started between the two. As per the prosecution case the accused/appellant was doubting the fidelity of deceased Rampyari Bai. Even she explained to the accused/appellant that she had no physical relationship with anybody else but he was not ready to accept the explanation given by the deceased and said that he would kill her and in that process he poured kerosene on the body of Rampyari Bai and set her on fire. At that time son of the deceased namely Pappu was at the residence and he tried to extinguish fire in order to save the life of his mother who also received burn injuries. He immediately went to his grand mother and informed her about the incident. Thereafter, Rampyari Bai was taken to Government Hospital, Bilaspur where Dehati Nalisi Ex. P-15 was given by Rampyari Bai at 12.20 hours and based on that first information report Ex. P-16 was registered for the commission of offence under section 307 of the IPC. However, during the treatment Rampyari bai succumbed to the burn injuries on 20.9.1997 and the merg intimation Ex.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

P-16-A was sent to that effect to the police station and on the basis of which offence was converted into section 302 of the IPC.

3. On receiving the information from Pappu, the son of the deceased, mother of the deceased also reported the matter to the police. The same was recorded under Rojnamcha Ex. P-11-A. The post mortem on the body of Rampyari Bai was conducted by Dr. S. Rao and Dr. Naidu and they prepared the post mortem report Ex. P-8 in which they opined that death occurred due to shock and extensive burn injuries to the extent of 100 per cent. The Investigating Officer after giving notice of Ex. P-2 to the Panchas prepared the inquest report Ex. P-3 of the body of Rampyari bai.

4. After completion of the investigation charge sheet was filed in the Court of Chief Judicial Magistrate Bilaspur who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

5. Prosecution in order to establish the charge against the accused/appellant examined as many as eleven witnesses. Statement of the accused/appellant was also recorded under section 313 of the Code of Criminal Procedure in which he has stated that he was working as servant

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ~~C.R.A.~~ 2647/99 **सन् 200** — 4 —

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the deceased and was residing separately. In reply to the remaining questions given by the accused, he stated that the evidence of the prosecution is false. At last he has stated that he is innocent and has been falsely implicated in the crime in question due to animosity and prior to that a case of theft was also lodged against him and he was acquitted in that case. He also examined two witnesses in defence namely Dashrathlal and Bajrang Prasad. Learned Additional Sessions Judge after hearing the arguments of counsel for both the parties convicted and sentenced the accused/appellant as mentioned above.

6. We have heard Shri Ranbir Singh counsel for the accused/appellant and Shri G.D. Vasvani, Additional public prosecutor for the respondent/State.

7. It is not disputed that Rampyari Bai died on account of burn injuries.

8. As far as the involvement of the accused/appellant in committing the murder of Rampyari Bai by setting her on fire after pouring kerosene on her body is concerned, the conviction primarily rests on the evidence of PW-1 Pappu, the son of the deceased who also received burn injuries in the process of extinguishing the fire and PW-2 Rambha Bai, the mother of

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2647/99 **सन् 200**

-5-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the deceased as also the dying declaration in the form of Dehati Nalisi Ex. P-15 made by Rampyari Bai before Sub Inspector T.P. Singh (PW-11). As far as evidence of PW-1 Pappu and PW-2 Rambha Bai is concerned, learned counsel for the accused/appellant vehemently argued that Rambha Bai lodged the report in the police station which was recorded in Rojnamcha Ex. P-11-A in which there was no mention regarding the fact that accused set the deceased on fire after pouring kerosene on her body whereas the deceased in her Dehati Nalisi Ex. P-15 has stated that she was set on fire by the accused. Mr. Singh further submitted that Rojnamcha Ex. P-11-A was given by Rambhai Bai PW-2 based on the information given by PW-1 Pappu whereas Pappu in contravention of that evidence has stated that accused set the deceased on fire. Further argument of Mr. Singh is that Santosh PW-5 who is the other son of the deceased and at the relevant time he was residing with PW-2 Rambha Bai has categorically stated that Rampyari Bai was in the habit of consuming liquor and she herself set on fire. Therefore, in the presence of evidence of PW-5 Santosh, evidence of PW-1 Pappu does not inspire confidence. Mr. Singh also submitted that as per the evidence of PW-10 Dr. Smt. S. Jitpure, Rampyari Bai was brought to the hospital at 12.10 hours and she

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CRA...2647/99 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was not in a position to speak, therefore, Dehati Nalisi Ex. P-15 which is said to have been given by the deceased to the Police Officer also does not inspire confidence.

9. On the other hand learned counsel for the respondent/State supports the impugned judgment of the trial Court.

10. In order to appreciate the argument of Shri Singh we have perused the evidence available on record.

11. It is true that in the Rojnamcha report Ex. P-11-A given by Rambha Bai simply it has been mentioned that Pappu informed Rambha Bai that his mother received burn injuries. It is not mentioned in the Rojnamcha report that the accused set the deceased on fire after pouring kerosene on her body. In the court evidence PW-1 Pappu has categorically stated that he witnessed the incident and the accused set the deceased on fire and even in Dehati Nalisi Ex. P-15 given by the deceased about an hour after the Rojnamcha report Ex. P-11-A it has been stated that accused set the deceased on fire.

12. Having perused the evidence of PW-1 Pappu and PW-2 Rambha Bai we are not convinced by the arguments of Mr. Singh for the reason

मामला क्रमांक CRA 2457/99 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that in the first instance Rojnamcha report Ex. P-11-A was given by Rambha Bai based on the hearsay evidence which is said to have been given by Pappu to Rambha Bai. Unfortunately Pappu who has been examined as PW-1 has not been cross examined by the defence counsel in order to ascertain the correctness of the facts which were mentioned in the Rojnamcha report Ex. P-11-A that whether PW-1 Pappu gave the information to his grand mother not implicating the accused in the crime in question. Evidence of PW-1 Pappu is cogent and clear. This witness has categorically stated that at the relevant time he was residing with his mother Rampyari Bai (since deceased) and the accused. He has also stated that accused picked up the kerosene container, poured kerosene on the body of Rampyari Bai and set her on fire. This witness has clearly stated that it is true that the deceased and the accused both had consumed liquor before the incident. Witness Pappu PW-1 received burn injuries while he was trying to extinguish the fire. This fact has not been disputed and in his cross examination nothing has been brought on record to show as to why this boy had implicated the accused in a false case. When Rampyari Bai was in the hospital and was receiving treatment, dying declaration Ex. P-15 in the form of Dehati Nalisi was given by her to

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2647/99 **सन् 200** -8-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

one T.P. Singh, S.I., PW-11 who has stated that Rampyari Bai gave statement of Ex. P-15 in which she had stated that accused was doubting the fidelity of the deceased namely Rampyari Bai, on the fateful day he asked the deceased that she was having relations with the other person which was denied by the deceased but that did not satisfy the conscience of the accused, he poured kerosene on the body of the deceased and set her on fire. He has categorically stated that it is incorrect to say that Rampyari Bai was not in the state of giving statement. In paragraph 9 of the evidence he has categorically stated that the duty doctor gave certificate on Ex. P-18 that Rampyari Bai is fit for giving the statement. Therefore, in view of the above evidence the evidence of PW-10 Dr. Smt. S. Jitpure to the extent that when she was treating Rampyari Bai, she was not in a position to speak, loses significance. Even other witnesses have also stated that in the hospital also Rampyari Bai was speaking. Therefore, there is no reason before us to disbelieve the dying declaration made by the deceased Rampyari Bai before PW-11 T.P. Singh which further finds corroboration by the evidence of PW-1 Pappu who was present at the residence at the time of incident.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13. Now coming to the evidence of PW-5 Santosh, the other son of the deceased who has stated that the deceased herself set on fire because the accused was doubting her fidelity, this witness has been declared hostile. He, however, has stated that at the time of incident he was residing with Rambha Bai and not with the deceased and as such he was not the witness to the incident whereas PW-1 Pappu who was residing with Rampyari Bai witnessed the incident, therefore, the evidence of this witness in the presence of evidence of PW-1 Pappu, loses its significance especially when this witness has turned hostile.

14. Therefore, for the foregoing reasons we are of the considered opinion that based on the dying declaration Ex. P-15 given before T.P. Singh and the evidence of PW-1 Pappu who himself received burn injuries in the process of saving the life of his mother, the court below has rightly reached the conclusion that the accused set Rampyari Bai on fire after pouring kerosene on her body and as such the judgment of the trial Court does not suffer from any illegality or infirmity.

15. In the result, the appeal of the accused/appellant being devoid of substance is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

21/11/06